

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 7
)	
)	Bankruptcy Case
EDGARDO S. TOTANES and)	No. 10-30304-DOT
MARIA C. TOTANES,)	
)	
Debtors.)	
_____)	
)	
BRUCE H. MATSON, TRUSTEE,)	
)	
Plaintiff,)	
)	Adversary Proceeding
v.)	No.
)	
WENDY WALKER COLES,)	
)	
Defendant.)	
_____)	

COMPLAINT

Bruce H. Matson, Trustee (the “Trustee”) for the bankruptcy estate (the “Estate”) of Edgardo S. Totanes and Maria C. Totanes (the “Debtors”), by counsel, files this Complaint and demands judgment in the amount, and for the reasons, respectfully stated herein as follows:

Parties

1. On or about January 19, 2010 (the “Petition Date”), the Debtors filed for relief in this Court pursuant to chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”).
2. On January 20, 2010, the Trustee was appointed interim trustee, and no trustee having been elected at the meeting of creditors held pursuant to section 341 of the Bankruptcy Code, he continues to serve as trustee in this case.

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3. Wendy Walker Coles (“Defendant”) is an individual residing in Henrico County, Virginia. Defendant is subject to service of process anywhere in the United States pursuant to Rule 7004(b) of the Federal Rules of Bankruptcy Procedure.

Jurisdiction and Venue

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

5. This proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(a) and (b)(2)(A) and (O).

6. Venue is proper pursuant to 28 U.S.C. § 1409(b) as Defendant resides within the Eastern District of Virginia.

Background

7. Maria Totanes and Defendant (the “Parties”) entered into a Sales Agreement dated February 6, 2008 (the “Sales Agreement”) whereby Maria Totanes agreed to sell all her rights, title and interest in High Velocity Group, Inc. d/b/a Tidbits of Chesterfield and Amelia to Defendant in consideration for \$15,000.00. Defendant placed a deposit of \$500.00 with Maria Totanes. Closing was to be held no later than March 6, 2008, at which time Defendant would pay to Maria Totanes the balance of \$14,500.00. A true and correct copy of the Sales Agreement is attached hereto as Exhibit A.

8. The Parties executed an addendum to the Sales Agreement entitled “Purchase Agreement” and dated March 19, 2008 (the “Addendum”), whereby they agreed that Defendant would pay the principal balance under the Sales Agreement of \$14,500.00 over thirty-six (36) months commencing on April 1, 2008 at eight percent (8%) interest, resulting in equal monthly payments due in the amount of \$454.38. The parties further agreed to a six percent (6%) penalty

for past-due payments. A true and correct copy of the Addendum is attached hereto as Exhibit B.

9. The Debtors filed their bankruptcy petition on January 19, 2010, and the Trustee was duly appointed on January 20, 2010.

10. Defendant's last full monthly payment in the amount of \$454.38 was made on February 22, 2010.

11. By letter dated February 25, 2010, the Trustee informed Defendant of the Debtors' bankruptcy and that all payments pursuant to the Sales Agreement and Addendum should thereafter be made directly to the Trustee.

12. Defendant breached the terms of the Sales Agreement and Addendum by failing to make the payment due March 1, 2010 to the Trustee. Defendant further failed to make monthly payments due on April 1, 2010 and May 1, 2010.

13. By letter dated April 5, 2010, the Trustee informed Defendant of her breach.

14. Defendant made a partial payment of \$200.00 to the Trustee on May 14, 2010. Defendant has since failed to make any additional payments.

15. As of July 27, 2010, the principal amount due and owing by Defendant under the Sales Agreement and Addendum was \$7,943.00.

Count I: Breach of Contract

16. The Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 15 above as though set forth fully herein.

17. Pursuant to the Sales Agreement and Addendum, Defendant was required to make thirty-six (36) consecutive monthly payments of \$454.38, commencing on April 1, 2008.

18. Defendant failed to make the payment due under the Sales Agreement and

Addendum on March 1, 2010, as well as each and every monthly payment due thereafter. Defendant's failure to make the required monthly payments constitutes a breach of her obligations under the Sales Agreement and Addendum.

19. The unpaid principal balance on the Sales Agreement and Addendum is \$7,943.00. Interest at the annual rate of eight percent (8%) on the unpaid principal balance has accrued from April 1, 2008, and it will continue to accrue at that rate until entry of judgment and at the applicable federal judgment rate of interest thereafter.

WHEREFORE, the LFG Trustee requests that the Court enter an Order:

(A) granting the Trustee judgment against Defendant in the amount of \$7,943.00, plus all accrued interest on such amount from April 1, 2008 until the date of judgment at eight percent (8%) interest and at the federal judgment rate thereafter until paid in full, plus all expenses, including attorneys' fees and costs incurred in obtaining such judgment (and plus all post-judgment attorneys' fees and related expenses incurred in collecting such judgment) from the date of judgment until the entire outstanding indebtedness under the Sales Agreement and Addendum is paid in full;

(B) granting the Trustee such other, further or different relief as the Court may deem just and appropriate.

Dated: October 29, 2010

Respectfully submitted,

LeCLAIRRYAN, A Professional Corporation

/s/ Ryan C. Day

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